

E.S.  
05/28/98

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF ALBION, MICHIGAN, )  
Defendant/Third-Party )  
Plaintiff, )  
 )  
v. )  
 )  
COOPER INDUSTRIES, INC. and )  
CORNING, INCORPORATED, )  
Third-Party Defendants, )  
Counterclaimants and )  
Third-Party Plaintiffs, )  
 )  
v. )  
 )  
DECKER MANUFACTURING )  
CORPORATION, )  
Third-Party Defendant. )  
\_\_\_\_\_ )

Case No. 1:97-CV-1037

Hon. David W. McKeague

US EPA RECORDS CENTER REGION 5



470113

STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIALITY

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (EPA), and the undersigned Defendant/ Third-Party Plaintiff, Third-Party Plaintiffs/ Counterclaimants/Third-Party Defendants and Third-Party Defendant (hereinafter referred to as "Executing Parties") have hereby stipulated that discovery and potential settlement discussions in this case will involve the production of documents which have been

submitted to EPA by various contractors (listed in Annex 1, hereinafter referred to as "submitter(s)") containing information which may be entitled to confidential treatment. In view of this stipulation, the Court finds that good cause exists for the issuance of an order requiring limited disclosure of such information, and that entry of this Order is appropriate pursuant to Federal Rule of Civil Procedure 26(c). Consequently it is hereby **ORDERED**:

1. Plaintiff shall submit the documents containing information which may be entitled to confidential treatment to the Executing Parties and such documents shall be handled in accordance with the terms of this Protective Order Regarding Confidentiality (hereinafter referred to as "Protective Order").

2. As used in this Protective Order, the term "confidential information" means trade secrets or commercial or financial information submitted by a person to the Plaintiff and which may be entitled to confidential treatment under 40 C.F.R. Part 2. This information has not been determined by Plaintiff, under 40 C.F.R. Part 2, not to be entitled to confidential treatment.

3. Any information to be produced by Plaintiff pursuant to this Protective Order shall be stamped conspicuously with the word "CONFIDENTIAL" by the Plaintiff on the top of each page of each

document prior to production to Executing Parties. The transmittal of information designated as confidential shall be done by letter from the Plaintiff stating that the information designated as confidential shall be subject to this Protective Order.

4. Information designated as confidential under this Protective Order shall not be used or disclosed by Executing Parties or any other person subject to Paragraph 7, below, for any purpose other than the preparation for, trial of, and settlement of, this action and any appeal therein.

5. The Executing Parties and Parties' counsel who obtain information designated as confidential hereunder, and any nonparty subject to this Protective Order, shall not disclose or permit disclosure of this information to any other person, including without limitation, any officer, director, employee, agent, or representative of the Executing Parties, Parties' counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to employees of Executing Parties or Parties' counsel who have responsibility for the preparation, trial, and settlement of this action or any appeal therein. Any employee to whom disclosure is made shall be advised of, and be subject to, the provisions of this Protective Order prior to such disclosure by executing the Confidentiality Agreement annexed

hereto. Employees do not include persons, firms, or corporations engaged by Executing Parties or Parties' counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this Paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter referred to collectively as "Expert(s)") employed or otherwise engaged by any Executing Parties or Parties' counsel to assist in the preparation, settlement, and trial of this litigation. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Protective Order by executing the Confidentiality Agreement annexed hereto. A copy of each executed Confidentiality Agreement shall be furnished to the Plaintiff and submitter not less than five (5) business days prior to disclosure of the confidential information to the Expert.

6. Executing Parties, and Parties' counsel, and any other person subject to this Protective Order, who obtains information designated as confidential hereunder, shall take all necessary and appropriate measures to maintain the confidentiality of the information, shall share such information only with persons authorized to receive it pursuant to this Protective Order, and shall retain the information in a secure manner. Except as

provided in Paragraph 5, above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential under this Protective Order may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof **only** for the purpose of preparation for settlement negotiations or litigation in this matter. All copies, duplicates, extracts, etc. shall be subject to the terms of this Protective Order to the same extent and manner as original documents obtained which are subject to this Protective Order.

8. Any information designated as confidential under this Protective Order shall be filed with the Court in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, an indication of the nature of the contents of such sealed envelope or container, the word "CONFIDENTIAL," and a statement substantially in the following form:

"This envelope, containing documents which are filed in this case by \_\_\_\_\_ ('the producing party'), is not to be opened and the contents are not to be displayed or revealed except by order of the Court or consent of the producing party."

9. Any unauthorized disclosure of information designated as confidential under this Protective Order shall not result in a

waiver of any submitter's claim of confidentiality.

10. If Plaintiff desires to add contractors to the list in Annex 1, Plaintiff may file written notice with the Court and the Executing Parties of the identities of such contractors. If the Executing Parties do not object within three (3) days of receipt of such notice, the contractors will be added to Annex 1.

11. Within 60 days after termination of this action by judgment, settlement or otherwise, or as may be determined by the Court or Plaintiff:

a. Any person who obtained information designated as confidential hereunder shall assemble and return such information to Plaintiff, including all copies, duplicates, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from Plaintiff. All such information covered by this Protective Order which constitutes the work product of counsel for the Executing Parties shall be destroyed; and

b. The Clerk of the Court shall maintain under seal all papers filed under seal until the Court orders otherwise.

12. Plaintiff and Executing Parties and Parties' counsel agree that this Stipulation and Protective Order, governing the handling of information provided by Plaintiff and designated as

confidential, shall be a binding agreement, enforceable as such upon execution by the parties hereto. The parties agree to submit this Stipulation and Protective Order to the Court for approval and entry as a Protective Order.

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR THE UNITED STATES OF AMERICA:

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Francis J. Biros  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 616-6552

OF COUNSEL:

Kathleen K. Schnieders  
U.S. Environmental Protection Agency  
Region 5  
(CS-29A)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 353-8912



Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR THE CITY OF ALBION, MI:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Charles M. Denton (P33269)  
Mark M. Davis (P43529)  
Varnum, Riddering, Schmidt &  
Howlett, L.L.P.  
Bridgewater Place  
P.O. Box 352  
Grand Rapids, Michigan 49501-0352  
(616)336-6000

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR COOPER INDUSTRIES, INC. &  
CORNING, INC.:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Eugene E. Smary (P26811)  
Melvin G. Moseley, Jr. (P44297)  
Daniel K. DeWitt (P51765)  
Warner, Norcross & Judd L.L.P.  
900 Old Kent Building  
111 Lyon Street, N.W.  
Grand Rapids, Michigan 49503  
(616) 752-2000

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR DECKER MANUFACTURING  
CORPORATION:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Alan D. Wasserman (P39509)  
Michael L. Caldwell (P40554)  
Fink Zausmer, P.C.  
31700 Middlebelt Road, Suite 150  
Farmington Hills, Michigan 48334  
(248)851-4111

Philip M. Moilanen (P17874)  
Bullen, Moilanen, Klaasen & Swan,  
P.C.  
402 South Brown Street  
Jackson, Michigan 49203-1426  
(517)788-8500

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

This Protective Order regarding confidentiality is hereby  
Approved and Entered by this Court. Each party to this Order is  
directed to comply with the requirements of this Order.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 1998

\_\_\_\_\_  
Honorable David W. McKeague  
United States District Court Judge

ANNEX 1

Roy F. Weston  
P.O. Box 8500 (S-6175)  
Philadelphia, PA 19178-6175  
Contract No. 68-01-7367

CH2M Hill/Ecology & Environment  
1941 Roland Clarke Place  
P.O. Box 4400  
Reston, VA 22091  
Contract No. 68-01-7347  
Contract No. 68-01-6692

Jacobs Engineering  
251 South Lake Ave.  
Pasadena, CA 91101  
Contract No. 68-01-7351

Planning Research Corporation  
233 N. Michigan Ave.  
Suite 1621  
Chicago, IL 60601  
Contract No. 68-W9-0006

Metcalf & Eddy  
6480 Busch Blvd.  
Suite 200 Columbus, OH 43229  
Contract No. 68-W9-0007

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ANNEX 2

STIPULATION AND PROTECTIVE ORDER  
CONFIDENTIALITY AGREEMENT

The undersigned is currently working at \_\_\_\_\_,  
which is located at \_\_\_\_\_. During the past  
year the undersigned has been employed or otherwise engaged as a  
consultant or contractor by the following entity located at the  
following address:

The undersigned hereby acknowledges that he/she has read the  
foregoing Stipulation and Protective Order Regarding  
Confidentiality ("Protective Order") executed by the attorneys of  
record for the parties in the action presently pending in the  
United States District Court for the Western District of Michigan,  
Southern Division entitled, United States v. City of Albion,  
Michigan, et al., Civ. No. 1:97-CV-1037 (W.D. Mich.), understands  
the terms thereof, and agrees, upon threat of penalty of contempt,  
to be bound by such terms. The undersigned understands that  
disclosure of information which has been designated as confidential  
by the submitter of that information may cause substantial harm to  
the affected business' competitive position. Accordingly, among  
other responsibilities, the undersigned shall only share such  
information with persons specifically authorized to receive the  
information pursuant to the Protective Order, shall retain the  
information in a secure manner, and shall use such information only  
for the purposes authorized by the Protective Order. The  
undersigned understands that the pledge of confidentiality under  
this Confidentiality Agreement continues after the lawsuit is over.  
Furthermore, the undersigned understands that a breach of the  
Protective Order may subject him/her to civil claims for damages  
and to criminal prosecution under 42 U.S.C. 9604(e) (7) (B).

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_